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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,499	12/10/2003	Eugene C. Pikus	A39.2-11304US01	9230

490 7590 09/14/2006

VIDAS, ARRETT & STEINKRAUS, P.A.
6109 BLUE CIRCLE DRIVE
SUITE 2000
MINNETONKA, MN 55343-9185

EXAMINER	
CLEMENT, MICHELLE RENEE	
ART UNIT	**PAPER NUMBER**
3641	

DATE MAILED: 09/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/733,499	PIKUS ET AL.	
	Examiner	Art Unit	
	Michelle (Shelley) Clement	3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 June 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-25* is/are pending in the application.

4a) Of the above claim(s) *19 and 20* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18, 21-25* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection as necessitated by applicant's amendments.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-6, 8, 9, 11, 12, 14, 21 and 22 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Schmidt (US Patent # 4,649,796). Schmidt discloses the claimed system and method for utilizing the system for programming a fuze comprising a fuze having a (radio frequency) receiver/transceiver, the receiver located within the fuze, a fuze setter having a (radio frequency) transmitter/transceiver, wherein pre-launch fuze setting data is transmitted from the transmitter to the receiver via an RF electromagnetic signal. The transmitter is within 6 inches of the receiver and comprises a modulation circuit and an antenna and analog to digital converter. The fuze setting data is transmitted via a frequency modulated carrier signal by shifting the frequency. It is noted that the [a) statements of intended use or field of use, b)"adapted to" or "adapted for" clauses, c) "wherein" clauses, or d) "whereby"]clauses are essentially method limitations or statements of intended or desired use. Thus, these claims as well as other statements of intended use do not serve to patentably distinguish the claimed structure over that of the reference. See In re Pearson, 181 USPQ 641; In re Yanush, 177 USPQ 705; In re

Finsterwalder, 168 USPQ 530; In re Casey, 512 USPQ 235; In re Otto, 136 USPQ 458; Ex parte Masham, 2 USPQ 2nd 1647.

See MPEP § 2114 which states:

> A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ 2nd 1647
>
> Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. In re Danly, 120 USPQ 528, 531.
>
> Apparatus claims cover what a device is not what a device does. Hewlett-Packard Co. v. Bausch & Lomb Inc., 15 USPQ2d 1525, 1528.

As set forth in MPEP § 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

3. Claims 24 and 25 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Koerner et al. (US Patent # 4,495,851). Koerner et al. discloses a system for programming a fuze comprising a fuze comprising a receiver, the receiver located within the fuze, and a fuze setter having a transmitter, wherein the transmitter transmits an electromagnetic signal comprising pre-launch fuze setting data and the receiver receives the electromagnetic signal, wherein the electromagnetic signal has a frequency ranging from greater than 100 kHz to 100 PHz.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt as applied to claims 1 and 5 above. Schmidt discloses the claimed invention except for the express optimum bits/second. It would have been obvious to one of ordinary skill in the art at the time the invention was made to increase the number of bits/second that could be transmitted and to place the transmitter at an optimum distance from the receiver, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges and discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Aller*, 105 USPQ 233 and *In re Boesch*, 617 F.2d 272.

6. Claims 2, 3, 7, 10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt as applied to claims 1, 5 and 6 above, and further in view of Keil et al. (US Patent # 6,176,168). Although Schmidt does not expressly disclose they system wherein the fuze further includes an inductive transmitter and the fuze setter including magnetic transducer, and operational power for the fuze is inductively transmitted from the fuze setter to the fuze, a receiver and a talkback signal sent from the fuze transceiver to the fuze setter transceiver, Keil et al. does. Keil et al. teaches an improved circuitry for a system wherein a fuze has a receiver and a transmitter and a fuze setter has a receiver and transmitter, wherein pre-launch fuze setting data is transmitted to the fuze and a talkback signal is sent from the fuze to the fuze setter in order to improve communication between the fuze and the fuze setter. Keil et al. further teaches a system wherein operational power for the fuze is inductively transmitted from the fuze setter to the fuze and digital-to-analog converters. Keil et al. and Schmidt are analogous art because they are from the same field of endeavor: fuze setting. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the talkback features, the operational

power transmission, and digital-to-analog converters as taught by Keil et al. with the system as taught by Schmidt. The suggestion/motivation for doing so would have been to obtain a fuze setting system that could effectively communicate between the fuze and the setter.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stauers et al. (US Patent # 4,237,789), Woznica et al. (US Patent # 6,041,688), and Becker et al. (US Patent # 4,979,424).

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle (Shelley) Clement whose telephone number is 571.272.6884. The examiner can normally be reached on Monday thru Thursday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571.272.6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MICHELLE CLEMENT
PRIMARY EXAMINER